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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

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6 COMMODITY FUTURES TRADING
7 COMMISSION,

8 Plaintiff,

9 v.

10 DAVID GILBERT SAFFRON, ET AL.,

11 Defendants.

Case No. 2:19-cv-01697-JAD-DJA

ORDER

12 This matter is before the Court on Interested Party James Damien Scott's Motion to Quash
13 Subpoena (ECF No. 86), filed on November 23, 2020. Plaintiff filed a Response (ECF No. 87,
14 Corrected Image for Exhibit F ECF No. 91) and Addendum (ECF No. 88) on December 7-8 and
15 15, 2020. Scott filed a Reply (ECF No. 90) on December 14, 2020. The Court finds that this
16 matter is appropriately resolved without a hearing. *See* Local Rule 78-1.

17 **I. BACKGROUND**

18 The parties are familiar with the facts of this matter and the Court will only outline those
19 necessary for the determination of this motion. Scott moves to quash Plaintiff's subpoena duces
20 tecum to JP Morgan Chase Bank issued on November 9, 2020. (ECF No. 86). Alternatively,
21 Scott requests that the Court limit the subpoena to documents relevant to this case. He argues that
22 it is overbroad in subject matter scope (seeking all documents related to Scott's accounts,
23 withdrawals, deposits, lines of credit, correspondence, checks, and all transactions in excess of
24 \$250), temporal scope (no timeframe listed), and is not limited to transactions with David
25 Saffron. Scott admits that the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-22 (2018)
26 ("RFPA") permits a subpoena for financial records if relevant to a legitimate law enforcement
27 inquiry. He contends that the subpoena being challenged does not describe the legitimate law
28 enforcement basis beyond reference to Defendant Saffron's name and list of statutes he is alleged

1 to have violated. Scott also claims that he does not have any relevant information for this case
2 and his personal finances have no connection to the charges against Defendant Saffron. He also
3 requests his attorneys fees for having to bring this motion pursuant to 12 U.S.C. § 3418.

4 Plaintiff responds that it issued the Rule 45 subpoena to JP Morgan Chase to obtain
5 documents and information regarding Scott's account as allowed by the RFPA. (ECF No. 87).
6 Plaintiff contends that the subpoena is within the scope of permitted discovery under Fed.R.Civ.P.
7 26 and the October 29, 2020 Court Order authorizing expedited third-party discovery (ECF No.
8 80). It contends that Defendants have refused to produce any business records or comply with the
9 asset freeze imposed by the Court. Plaintiff claims that Defendants are engaging in ongoing
10 contempt of the Court's TRO, PI and Contempt Orders (ECF Nos. 9, 31, and 51). Plaintiff also
11 believes that Scott is a close associate and financial handler of Defendant Saffron such that he is
12 accepting, holding, and/or dispersing customer funds on Defendant Saffron's behalf. Plaintiff's
13 response sets forth the grounds for its belief that Scott is connected to Defendant Saffron and
14 Saffron's business entities.

15 Scott replies that he supports the prosecution of Defendant Saffron and has found out that
16 Defendant Saffron was "never what he appeared to be." (ECF No. 90). However, he claims that
17 his personal privacy and rights established in the RFPA must be protected. He argues that the
18 notice is deficient in failing to connect the nature of the law enforcement inquiry to his personal
19 financials with a full explanation. Scott also indicates that he would accept a limited subpoena
20 from Plaintiff if it identifies the sources from which it believes Scott and his wife are handling
21 Defendants' assets.

22 **II. DISCUSSION**

23 Federal Rule of Civil Procedure 26(b)(1) provides for broad and liberal discovery.
24 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's
25 claim or defense and proportional to the needs of the case." *Id.* The court may limit discovery if
26 it is unreasonably cumulative or duplicative, or can be obtained from some other source that is
27 more convenient, less burdensome, or less expensive . . . [or] the proposed discovery is outside
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1 the scope permitted by Rule 26(b)(1). Rule 26(b)(2)(C)(i-iii). Further, a court may limit
2 discovery via Rule 26(c), which permits the court to issue a protective order to protect a party or
3 person from annoyance, embarrassment, oppression, or undue burden or expense when the party
4 establishes good cause. When the discovery at issue is a subpoena on a nonparty, Rule 45
5 governs. “It is well established that the scope of discovery under a subpoena issued pursuant to
6 Rule 45 is the same as the scope of discovery allowed under Rule 26(b)(1).” *Painters Joint*
7 *Committee v. Employee Painters Trust Health & Welfare Fund*, 2011 WL 4573349 at *5 (D. Nev.
8 Sept. 29, 2011).

9 Accordingly, the Court utilizes the Rule 26 framework to determine if the information
10 sought by the Rule 45 subpoena is relevant and proportional to the needs of the case. After
11 careful consideration of all of the parties’ arguments, the Court finds that Plaintiff’s position is
12 more persuasive on the relevance issue. Plaintiff sets forth sufficient grounds in its Response and
13 accompanying declaration to establish that Scott has connections to Defendant Saffron and
14 Defendant Saffron’s business entities such that the subpoena is not mere speculation or a fishing
15 expedition. The Court finds that Scott’s financial records are relevant to Plaintiff’s efforts to
16 trace the funds that Defendants have allegedly fraudulently obtained and determine if they have
17 violated the Court’s asset freeze orders.

18 Similarly, the Court finds that when utilizing the proportionality analysis, Plaintiff’s
19 subpoena should not be quashed. Contrary to Scott’s argument, the subpoena is limited
20 temporally from January 1, 2017 to the present. The Court finds that timeframe to be reasonable
21 based on the needs of this case. As to the subject matter scope, Scott fails to set forth any
22 argument that it would be burdensome for JP Morgan Chase to produce all documents related to
23 Scott’s bank accounts as they are all electronic consumer records. Plaintiff also notes that JP
24 Morgan Chase did not object to the breadth of the subpoena. Moreover, Scott appears to rely on
25 his previous relevance objection to challenge proportionality by claiming it is not clear why all of
26 his personal financial documents are relevant to the claims at issue in this case. However, it is his
27 burden to convince the Court that such scope is not proportional to the needs of the case. He
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1 suggests that Plaintiff limit the subpoena to specific accounts of his rather than his entire financial
2 history as long as Plaintiff can identify which accounts have a connection with Defendants. This
3 puts Plaintiff in an inappropriate catch-22. Plaintiff would need to know what accounts Scott has
4 and then connect those specific accounts to Defendants, but this is the purpose of the current
5 subpoena – to identify all accounts with a connection to the claims at issue and Defendants’
6 actions with respect to the Court’s asset freeze orders.

7 Further, the Court is mindful that Scott does not believe his entire financial history should
8 be examined as he is not a defendant in this case. However, as noted above, the timeframe set
9 forth in the subpoena significantly limits the records being sought to an almost 4-year period –
10 clearly not his entire financial history. Also, Scott’s privacy concern can appropriately be
11 addressed via a protective order rather than quashing the subpoena. Therefore, the Court will
12 require Plaintiff to maintain Scott’s records received via JP Morgan Chase’s response under a
13 confidential label and not file any such records except under seal with the Court.

14 Finally, given that this subpoena relies on the RFPA, the Court must also consider
15 whether the customer notice complies with the RFPA. As Scott points out, his financial
16 involvement in this case – and the claims at issue – is not described in the subpoena.
17 Nevertheless, the Court finds that this is not a defect that requires quashing the subpoena as
18 Plaintiff adequately described the relation to Scott’s finances and the Court’s TRO, PI, and
19 Contempt Orders in its Response. *See Sweeney v. Inspector General of U.S. Dep’t of Agric.*,
20 2014 WL 5361968, at *4 (E.D. Cal. Oct. 21, 2014) (finding agency properly complied with the
21 RFPA where notice informed movant of specific nature of investigation but did “not specifically
22 reference that the investigation includes examining whether the Movant improperly received loan
23 funds”); *see also Rodriguez v. Federal Sav. & Loan Ins. Corp.*, 712 F. Supp. 159, 162 (N.D. Cal.
24 1989) (finding even where the consumer notice is deficient, information in the government’s
25 response to a consumer challenge states the nature of inquiry with sufficient specificity). If the
26 Court were to believe Scott, then every RFPA notice would need to include an affidavit similar to
27 that necessary for a criminal warrant. That simply stretches the statutory text too far. Here,
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1 Plaintiff has sufficiently connected Scott's finances to the discoverable subject matter of the
2 Court's asset freeze orders as outlined in its Response and Declaration. The Notice also
3 specifically outlines that law enforcement inquiry at issue, which the particular statutes that
4 Defendants are alleged to have violated. Ultimately, after careful consideration of all of the
5 arguments, the Court finds that the subpoena is relevant and proportional to the needs of the case,
6 appropriate under Rule 45 and the RFPA, and should not be quashed.

7 **IT IS HEREBY ORDERED** that Interested Party James Damien Scott's Motion to
8 Quash Subpoena (ECF No. 86) is **denied**.

9 DATED: December 18, 2020.



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE